

**DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER PROTECTION BUREAU**

FACT SHEET

**SHORT-TERM AUTHORIZATION 75-5-308, MONTANA CODE ANNOTATED (MCA)
Exemption for Routine Maintenance in Irrigation Conveyances**

Summary

The Montana Water Quality Act (WQA) no longer requires that a person applying pesticides to an irrigation conveyance system (manmade ditch) obtain authorization to do so under Section 308, provided that the application is for routine maintenance activities, such as clearing of aquatic weeds, algae, or other plant material. However, those persons conducting such activities, and the pesticide products they use, must be in compliance with the Montana Pesticides Act [Title 80, chapter 8, MCA] as administered by the Montana Department of Agriculture (MDA).

This change results from amendments made to the WQA during the 2003 Legislative Session. This exemption applies only to manmade conveyance systems; it does *not* apply to the application of pesticides in any natural waterbody, including lakes, ponds, streams, rivers, and natural wetlands. The pesticide application must not result in a violation of water quality standards in any state water outside of the conveyance system. Anyone performing an activity that causes a discharge of wastes to state waters, including irrigation conveyances or manmade ditches, is still required to obtain a discharge permit and is not affected by this amendment.

Background

Montana has adopted both numeric and narrative water quality standards that protect beneficial uses, such as public water supply, fish, and aquatic life, agriculture, recreation, and industrial uses. The Montana WQA prohibits any activity that may cause an exceedance of these standards [75-5-605, MCA]. The Department of Environmental Quality (DEQ) routinely issues authorizations to exceed water quality standards for application of registered pesticides to state water for a variety of activities. Section 308 of the WQA authorizes the DEQ to establish a short-term exemption from water quality standards for emergency remedial activities and for the application of pesticides to control nuisance aquatic organisms or to eliminate undesirable and nonnative aquatic species when these activities are determined to be in the public interest and to have no adverse effect on other beneficial uses.

Senate Bill 383 added a new provision to the WQA [75-5-605(3), MCA] that states: “Activities associated with routine or periodic maintenance, repair, replacement, or operation of irrigation water conveyance systems, including activities associated with any constructed channel, canal, ditch, pipeline, or portion of any constructed channel, canal, ditch, or pipeline, are not prohibited activities under this chapter if the activities do not result in exceeding water quality standards for any receiving water outside the irrigation water conveyance system.” The effect of this paragraph is to exempt this class of activity from paragraphs 1 and 2 of Part 605, which prohibits activities that cause pollution of state waters. Pollution means contamination or alteration of

state water that exceeds limits allowed by Montana water quality standards [75-5-103(25), MCA].

The application of pesticides in canals and laterals to control aquatic vegetation is an annual and routine maintenance activity performed in most irrigation systems. Failure to perform this activity could result in decreased water flow in the system, causing reduced crop yields. Consequently, these activities are considered routine maintenance and, under normal conditions and by following label instructions, do not result in an exceedance of water quality standards outside of the irrigation system. The treated water is typically used to irrigate crops.

Pesticides commonly applied to irrigation canals and laterals to remove and control aquatic vegetation include Magnacide H (acrolein), Aquatic Weed Killer (xylene), or a copper compound for aquatic vegetation control. Each year approximately 70 percent of the applications use acrolein, 26 percent use xylene, and 4 percent use a copper compound. Most applications are made between June 1 and September 31 of each year. Acrolein and xylene are restricted-use aquatic pesticides; the MDA requires persons using these chemicals to be trained and licensed.

Water Quality and Public Health Protection

Although 308 authorizations under the WQA are no longer necessary for these activities, other regulatory requirements remain in place to protect public health and state waters. The Environmental Protection Agency (EPA) requires that those applying aquatic pesticides follow EPA-approved product labels specifying application rates that are protective of water quality and public health. The MDA requires aquatic pesticide applicators to be trained, tested, and licensed. In addition, an Aquatic Management Plan must be submitted to MDA prior to application of restricted-use aquatic pesticides. The Plan requires the applicator to identify the final destination or use of treated water. Although the Magnacide H label allows for holding treated water for six days before it is discharged to state water, all districts use treated water for irrigating agricultural crops instead of discharging treated water to state water. MDA field inspectors work with pesticide applicators and regularly inspect irrigation systems; head gates, culverts, berms, and return-flow outlets are inspected for leakage.

Implementation

SB 383 became effective on passage and signature by the Governor in 2003; however, most of the 308 authorizations for the 2003 field season had already been issued. Persons who have applied for a 308 authorization for the 2004 field season will be given the opportunity to receive a refund and have the authorization revoked. The DEQ will continue to issue 308 authorizations upon request; however, the exceedance of water quality standards in a manmade irrigation conveyance is no longer a violation of the Montana WQA.

For more information contact the Water Protection Bureau at (406) 444-3080.